

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

FLOYD O. HUNT, JR.,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 3:23-cv-774-HEH
)	
COMMONWEALTH OF VIRGINIA,)	
)	
Respondent.)	

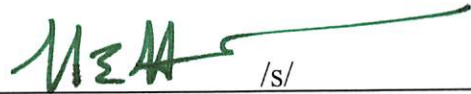
MEMORANDUM OPINION
(Dismissing Action Without Prejudice)

Petitioner Floyd O. Hunt, Jr. (“Petitioner”), a Virginia inmate proceeding *pro se*, submitted a “Motion for New Trial under Federal Rule of Criminal Procedure 33” that appears to challenge his state conviction. (ECF No. 1 (capitalization corrected).)¹ Given the content of this document, the Court found it appropriate to give Petitioner the opportunity to pursue this action as a petition for a writ of habeas corpus under 28 U.S.C. § 2254. (Mem. Order at 1–2); *see also Rivenbark v. Virginia*, 305 F. App’x 144, 145 (4th Cir. 2008). Accordingly, by Memorandum Order entered on November 22, 2023, the Court directed Petitioner, within twenty (20) days of the date of entry thereof, to complete and return the standardized form for filing a § 2254 petition as required by Eastern District of Virginia Local Civil Rule 83.4(A). (Mem. Order at 2.)

¹ By Memorandum Order entered on November 22, 2023, the Court explained: “The Court notes that the Federal Rules of Criminal Procedure do not apply to state criminal proceedings. *See* Fed. R. Crim. P 1(a)(1) (‘These rules govern the procedure in all criminal proceedings in the United States district courts; the United States court of appeals, and the Supreme Court of the United States.’) Therefore, Rule 33 would not provide Petitioner with a means to challenge his state conviction in this Court.” (ECF No. 3, at 1 n.1.)

More than twenty (20) days have elapsed, and Petitioner has not completed and returned the standardized form or otherwise responded to the Court's Memorandum Order. Accordingly, the action will be dismissed without prejudice.

An appropriate Order shall accompany this Memorandum Opinion.



Henry E. Hudson
Senior United States District Judge

Date: Dec. 22, 2023
Richmond, Virginia